## IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

SPABO ICE CREAM CORP. d/b/a MISTER SOFTEE

WIIDTLK DOI 1

and

MISTER SOFTEE, INC.

Plaintiffs,

v.

DOMINGO ICE CORP., a/k/a DOMINGO ICE CREAM,

and

AKOP PAPAZIAN,

and

M PETE SOFT ICE CREAM CORP,

and

FAUSTO MORETA

Defendants.

TO: J. Michael McMahon, Clerk Of Court United States District Court

Southern District Of New York

500 Pearl Street

New York, New York 10007

Please enter the default of Defendant M Pete Soft Ice Cream Corp. pursuant to Rule 55(a) of the Federal Rules of Civil Procedure for failure to plead or otherwise defend the above-captioned action as fully appears from the court file herein and from the attached affirmation of Paul J. Cianci.

Civil Action No. 08-CV-6138

BY:

EINBINDER & DUNN, LLP

Date: August 13, 2008

Michael Einbinder (ME-3930)

104 W. 40th Street

New York, NY 10018

(212) 391-9500

Attorneys for Plaintiffs

## IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

SPABO ICE CREAM CORP. d/b/a	<del></del> :
MISTER SOFTEE	:
and	: :
MISTER SOFTEE, INC.	: Civil Action No. 08-CV-6138
Plaintiffs,	: :
v.	
DOMINGO ICE CORP., a/k/a DOMINGO ICE CREAM,	: : :
and	:
AKOP PAPAZIAN,	
and	: :
M PETE SOFT ICE CREAM CORP,	: :

and

FAUSTO MORETA

Defendants.

Plaintiffs Spabo Ice Cream Corp. d/b/a Mister Softee and Mister Softee, Inc., by their undersigned attorneys, respectfully request that the Clerk of this Court certify default against Defendant M Pete Soft Ice Cream Corp. ("Defendant"), and in support thereof Paul J. Cianci, counsel for Plaintiff, avers as follows:

1. Defendant is a corporation (and thus, is not an infant, in the military, or an incompetent person).

2. The time within which Defendant may answer or move with respect to the complaint herein has expired. Defendant has not answered or otherwise moved with respect to the complaint, and the time for Defendant to do so has not been extended through this date.

3. A true and correct copy of the Affidavit of Service upon Defendant is attached hereto as Exhibit A.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and information.

#### FISHER ZUCKER LLC

Dated: August 13, 2008 By: /s/ Paul Cianci

Paul J. Cianci 21 South 21<sup>st</sup> Street Philadelphia, PA 19103 (215) 825-3100 Attorneys for Plaintiffs 

# Exhibit "A"

△AO 440 (Rev. 8/01) Summons in a Civil Action	:	<u> </u>	s i sa	
tion and the control of the control of the desire that the desire of the control	RETURN OF SER	RVICE	Ag g	
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☐ Other (specify):				
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AO 440 (Rev. 8/01) Summons in a Civil Action

#### UNITED STATES DISTRICT COURT

····	Southern	District of	•	New York
i í v	Spabo Ice Cream Corp., d/b/a Mister Softee and Mister Softee, Inc.		•	
	•	SU	MMONS I	N A CIVIL ACTION
	V. Domingo Ice Cream Corp., et al.		i	
		CASE NUM	IBER:	To Take the engineering of the second
		08	CV	6138
			nings	SCHEINDLIN
	TO: (Name and address of Defendant)		JUJUL	OUILIIIULIIV
	M PETE SOFT ICE CREAM COR 43-07 42nd Street, #2M Sunnyside, NY 11104			
	en e	A remain which		
	YOU ARE HEREBY SUMMONED and requi	red to serve on PL	AINTIFF'S A	TTORNEY (name and address)
	Michael Einbinder, Esquire Einbinder & Dunn, LLP 104 W. 40th Street New York, New York 10018			
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of this for the	swer to the complaint which is served on you with summons on you, exclusive of the day of service e relief demanded in the complaint. Any answer of this Court within a reasonable period of time a	If you fail to do s that you serve on	o, judgment b	20 days after serv y default will be taken against this action must be filed with
	J. MICHAEL McMAHON		JUL	0 3 2008

(By) DEPUTY CLERK

# IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

SPABO ICE CREAM CORP. d/b/a MISTER SOFTEE	
and	: :
MISTER SOFTEE, INC.	: Civil Action No. 08-CV-6138
Plaintiffs,	: :
V.	: :
DOMINGO ICE CORP., a/k/a DOMINGO ICE CREAM,	: : :
and	
AKOP PAPAZIAN,	:
and	: :
M PETE SOFT ICE CREAM CORP,	: :
and	: :
FAUSTO MORETA	: :
Defendants.	; ; :
I, J. Michael McMahon, Clerk of	Court of the United States District Court for the
Southern District of New York, do hereby	certify that Defendant M Pete Soft Ice Cream Corp.
has not filed an answer or otherwise moved	with respect to the complaint herein. The default of
Defendant M Pete Soft Ice Cream Corp.is	hereby noted, pursuant to Rule 55(a) of the Federal
Rules of Civil Procedure.	
	J. MICHAEL MCMAHON Clerk of Court
Dated:, 2008 By:	Deputy Clerk